STATE OF MICHIGAN

COURT OF APPEALS

BEN NOURI, Plaintiff-Appellant,	UNPUBLISHED March 6, 2014
v	No. 313301 Oakland Circuit Court
FRED MONA, Defendant-Appellee.	LC No. 2011-121823-CK

Before: HOEKSTRA, P.J., and MURRAY and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of no cause of action entered after a bench trial. We affirm.

I. FACTS

Plaintiff was formerly married to defendant's sister. Plaintiff's complaint alleges that he obtained credit card cash advances in August 2006, September 2006, and January 2008, and loaned defendant a total of $28,805 in exchange for defendant's promise to pay plaintiff's credit card debt. Plaintiff testified that he loaned the money to defendant because defendant was at risk of losing his home in foreclosure proceedings in 2006, and then loaned defendant additional funds in 2008 to help defendant pay for replacement windows on his house. According to plaintiff, defendant discontinued paying plaintiff's credit card debt after plaintiff's divorce from defendant's sister. Plaintiff brought this action for repayment of the debt. Following a bench trial, the trial court found that plaintiff failed to prove the alleged loan agreement by a preponderance of the evidence, and accordingly, entered a judgment of no cause of action in favor of defendant.

The trial court made the following findings on the record:

> It's not clear here – it is not clear to the Court that a contract was offered and accepted. While forms of consideration in the form of money were discussed and credit card payments and statements were shown, the Court is hard pressed to find a formal offer and acceptance occurred and when.
>
> The Court has dates of house and mortgage by defendant in 1983 and by plaintiff in 1997 or '98. Plaintiff established nothing other than his client's

testimony supposedly saying that defendant was – wanted help in repaying a loan but defendant's own testimony he did not own a mortgage in 2006. Evidence of any mortgage issues are in 2005 and a redemption is acknowledge[d] in August of 2005 and plaintiff's checks to defendant occur at least a year later with the fourth one a year beyond that.

The Court because of the serious – the factual confusion that exists here, that works against plaintiff. There's been a mismatch of dates between the mortgage and the payments and the like. It appears that there was not an offer and acceptance and, therefore, the Court finds that there – that plaintiff did not prevail by a preponderance of the evidence to establish its case. The Court finds no contract existed.

II. ANALYSIS

The only issue raised on appeal is whether the trial court's findings of fact and conclusions of law were sufficient to comply with MCR 2.517(A),[1] which provides:

> (1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.
>
> (2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.
>
> (3) The court may state the findings and conclusions on the record or include them in a written opinion.

The central issue at trial was whether plaintiff loaned money to defendant in the fall of 2006 and in January 2008 in exchange for defendant's promise to repay the loans.[2] The trial court's findings clearly indicate that the court understood the contested factual issues. The trial court commented that the "mismatch of dates between the mortgage and the payments" weakened plaintiff's factual position. Although the court did not make an explicit statement regarding credibility, it is apparent from its statements that it resolved that issue in defendant's favor.

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[1] This is a question of law subject to de novo review. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

[2] Although plaintiff's complaint did not explicitly identify his claim as one for breach of contract, the trial court correctly treated the claim as such based on the substance of plaintiff's allegations. *Norris v City of Lincoln Park Police Officers*, 292 Mich App 574, 582; 808 NW2d 578 (2011).

The trial court also made separate and sufficient conclusions of law. The legal issue was whether plaintiff and defendant formed a contract that obligated defendant to pay installments on plaintiff's credit card. Plaintiff was therefore required to prove, by a preponderance of the evidence, that there was an offer and an acceptance, with "mutual assent or a meeting of the minds on all the essential terms." *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 452-453; 733 NW2d 766 (2006); *Children of Chippewa, Ottawa v Potawatomy Tribes v Regents of Univ of Mich*, 104 Mich App 482, 497; 305 NW2d 522 (1981). The trial court found that plaintiff's testimony regarding the circumstances of the alleged loans were not consistent with the chronology of defendant's foreclosure proceedings and therefore determined that plaintiff failed to prove by a preponderance of the evidence that there was an offer and an acceptance of a loan agreement. The trial court also recognized some consideration flowed between the parties, but plaintiff had not proven what it supported. The trial court thus explained how its findings supported its judgment, and were more than sufficient to satisfy the requirements of MCR 2.517(A).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Christopher M. Murray
/s/ Michael J. Riordan